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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,533	12/07/2001	Philip G. Koehler	FLG-033CIP	2804

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EXAMINER

VARNER, STEVE M

ART UNIT PAPER NUMBER

3635

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/010,533

Applicant(s)

KOEHLER ET AL.

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, "arthropod repellant substance," is indefinite.

Regarding claim 1, the attachment portion is not sized; therefore, the barrier material cannot be sized relative to it.

Claims 2-33 depend from claim 1 and are therefore rejected under 35 USC 112.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-37 are rejected under 35 U.S.C. 102(e) as being anticipated by

Sharples.

Sharples shows a barrier material (48) sized to fit adjacent to an attachment portion (12) between a fixture (12) and a fixed permanent surface in a room (Col. 1, Line 40), the barrier material (48) substantially closing off a passageway along where crawling arthropods can enter the room. Sharples shows an arthropod repellant substance (80) associated with the barrier material (48). (Fig. 3)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-6, 8, 11-16, 19, 21-32, 34-37, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharples.

Regarding claims 2-5, Sharples shows the basic claimed structure. Sharples does not show walls, ceilings, and floors. Walls, ceilings, and floors are well known fixed permanent structures. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use walls, ceilings, and floors as known in the art for the fixed permanent structure. The barrier device could then be attached to the fixed permanent structure where there is a passageway.

Regarding claims 6, 8, 11-16, 19, 21, 23, 25, 27, 29, 31; Sharples shows the basic claimed structure. Sharples does not show shower faucet handles, pipes, drainlines for sinks, incoming waterlines for sinks, waterlines for showerheads, electric powered fixtures, ceiling fans, lights, drain receptacles, vent covers, wall switches and

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covers, telephone jacks and covers, thermostats mounted to a wall portion, electrical sockets and covers, and cable sockets and covers. Shower faucet handles, pipes, drainlines for sinks, incoming waterlines for sinks, waterlines for showerheads, electric powered fixtures, ceiling fans, lights, drain receptacles, vent covers, wall switches and covers, telephone jacks and covers, thermostats mounted to a wall portion, electrical sockets and covers, and cable sockets and covers are well known household fixtures. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to use these fixtures in the structure of Sharples. These fixtures are interfaced with the wall, ceiling, and floor where the barrier material would be useful to deter arthropods traveling along a passageway created by the fixture.

Regarding claim 7, 9, 10, 17, 18, 20, Sharples shows the basic claimed structure. Sharples does not show barrier material in the form of a disc shaped with a center through-hole, a conical shape with a center through-hole therethrough, a bell shape with a center through-hole therethrough, a cup shaped insert having a center through-hole. Mere changes in size of this barrier material are within the level of ordinary skill in the art. These shapes are well known in the art. It would have been obvious to one of ordinary skill in the art at the time the present invention was made to change the size and shape of the barrier material to accommodate different sized and shaped fixtures.

Regarding claim 22, 24, 26, 28, 30, 32, Sharples shows a rectangular shaped insert having a rectangular shaped opening (48). (Fig. 3)

Regarding claim 33, Sharples shows the basic claimed structure. Sharples does not show a package. Packages are well known in the art. It would have been obvious

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to one of ordinary skill in the art at the time the present invention was made to use a package in the structure of Sharples to ship Sharple's invention to the purchaser.

Regarding claim 34-37, the claimed methods are the obvious methods of using Sharple's modified retractable electric wall outlet assembly.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ritter shows a rodent exclusion device. Carman shows a tree trunk barrier for pest control.

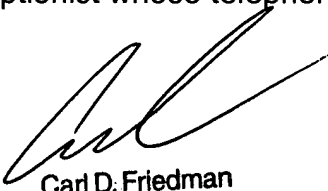
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-0839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV
January 6, 2003



Carl D. Friedman
Supervisory Patent Examiner
Group 3600